IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

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No. 74-475

UNIVERSAL BUILDERS, INC., ROSEWOOD CORPORATION, HAMILTON CORPORATION, LAWSON CORPORATION, INDEPENDENCE HOMES, INC., JARVIS HOMES, INC., CHATHAM TOWN HOMES, INC., and LARCHMONT HOME DEVELOPMENT CO.,

Petitioners,

vs.

SIDNEY and JULIA CLARK, REV. ROBERT ANDERSON, JR., DEE BELLANFANT, EDWARD and FREDDIE MAE BROWN, CLARANCE and MARY ANN CARR, ARTHUR and THELMA GREEN, CHARLES and CLEORIA HARDY, BESSIE HENDERSON, JOHN and WILLIE M. JACKSON, GREAD and NAOMI D. McKINNIS, JULIA W. MONTGOMERY, HARRY C. and MATTIE B. PELTON, JAMES and WILLIE PHELPS, ERNEST and SHIRLEY T. POWELL, JR., MRS. JOHNNIE RAMSEY, JOSEPH L. and BEVERLY THOMPSON, and WILLIAM and RUBY YOUNGBLOOD, on their own behalf and on behalf of all others similarly situated,

Respondents.

PETITIONERS' REPLY BRIEF.

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Respondents.

PETITIONERS' REPLY BRIEF.

THE BRIEF IN OPPOSITION TACITLY ADMITS THAT THIS CASE PRESENTS A SIGNIFICANT CONSTITUTIONAL QUESTION OF SUBSTANTIAL PUBLIC IMPORTANCE.

The petition filed herein discloses that the Seventh Circuit's decision is not only contrary to the plain wording of Section 1982, but also if given the construction placed upon it by the Seventh Circuit, the statute is unconstitutional. Significantly,

respondents' brief *ignores* this constitutional challenge. Instead, it urges this Court to refrain from review because a new trial was ordered. But a new trial will neither resolve the precedent value of the decision below, whether petitioners win or lose, nor will it stem the scores of cases that the decision has and will spawn, a point also noted in the petition and ignored in the brief in opposition.

Petitioners respectfully submit that expense and time, not only to petitioners, but to the countless other litigants who are and will be involved in litigation spawned by this decision, to say nothing of the burden placed upon the federal courts, should be avoided; that the ends of justice will be best served by review now.

In their effort to avoid review, respondents have misstated the issues. The issue is not whether 42 U. S. C. § 1982 is violated when a seller charges blacks prices which are higher than a third party or "related company"* charges whites for comparable property. The houses sold by the Deerfield joint venture were available to all who wished to buy and PFS Development Co. sold its houses to both whites and blacks. The issue is whether a seller can violate Section 1982 if he offers to all the property he has to sell on the same terms and conditions and sells to all who wish to buy on the same terms and conditions.

The issue is not whether a corporate officer is liable for his own violation of Section 1982. The issue is whether a corporation's alleged violation of civil rights, without more, automatically imposes liability on its officers, directors and shareholders.

The issue is not whether there has been a tolling of the statute of limitations or whether there has been an alleged

* Respondents' counsel admitted during the trial, with reference to the homes sold by the "related companies," "We don't claim the homes are identical. The area is not comparable . . . We are not comparing one house to another" and "The homes are not comparable; the area is fifty miles away."

continuing enforcement of an unlawful scheme. The issue is when did the cause of action accrue.

The issue of retroactive application was not settled by *Waters* v. *Wisconsin Steel Works of International Harvester Co.*, 427 F.2d 476 (7th Cir. 1970), *cert. den* 400 U.S. 911 (1970), as respondents claim. *Waters* dealt with retroactive application of *Jones* v. *Mayer Co.*, 392 U.S. 409 (1968), but the decision in the instant case is in clear conflict with *Jones*, where it was held that Section 1982 means what it says and should be so applied. If the section does not mean what it says and does mean what the instant decision holds, this unusual, unforeseen and unforeseeable rewriting of the statute should not be applied retroactively.

CONCLUSION.

The vital issues here are issues of law* which, in the interests of justice, should be resolved now.

Respectfully submitted,

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* Consequently, petitioners have not discussed the omissions of significant facts in the opinion and the respondents' numerous misstatements of the record.